



# MAYOR AND COUNCIL AGENDA

NO. 7

DEPT.: Public Works / Transportation  
STAFF CONTACT: Larry Marcus

DATE PREPARED: 9/21/2005  
FOR MEETING OF: 9/26/2005

## SUBJECT:

Recommendation to Approve a Development Impact Tax Memorandum of Understanding (MOU) with Montgomery County.

## RECOMMENDATION:

Approve the attached MOU with Montgomery County so that the City may obtain development impact tax revenues for transportation improvements.

## DISCUSSION:

In 2002, Montgomery County standardized its method for collecting funds for transportation capacity improvements necessary to support land development in the County, including development within the City of Rockville. The Montgomery County Council enacted Amendments to the Development Impact Tax, Article VII, Chapter 52, of the Montgomery County Code, establishing a fourth impact tax district encompassing the Cities of Gaithersburg and Rockville, as well as the entire County.

During the discussion with the County regarding funding support for the Town Square redevelopment project, the County decided to finance a portion of the \$12 million allocation from this funding source (for the transportation infrastructure). The proposed MOU will allow the City to apply the funds for other projects.

The purpose of the memorandum of understanding is to define the following:

- (1) acknowledge that a county taxing district exists to collect funds from developers to pay for transportation improvements, and that the funds collected from developments in Rockville will be given to the City;
- (2) specify the eligible projects, as defined by Development Impact Tax, Article VII, Chapter 52, of the Montgomery County Code; and
- (3) describe the process for obtaining the funds.

The projects listed in the MOU reflect eligible projects as defined by the following criteria outlined in the code. The language below is from the code:

- (1) New road or widening of an existing road that adds highway or intersection capacity or improves transit service or bicycle commuting, such as bus lanes or bike lanes;
- (2) New or expanded transit center or park-and-ride lot;
- (3) Bus added to the Ride-on bus fleet, but not a replacement bus;
- (4) New bus shelter, but not a replacement;
- (5) Hiker-biker trail used primarily for transportation;

- (6) Bicycle locker that holds at least eight bicycles;
- (7) Sidewalk connector to a major activity center or along an arterial or major highway; or
- (8) In a Metrostation Policy Area or an adjacent policy area, the operating expenses of any transit or trip reduction program

No more than 10 percent of the funds collected from this tax, other than funds collected in a Metro Station Policy Area, may be spent for the items listed in 4-8 above.

**Options Considered (*pros and cons*):**

None

**Fiscal Impact:**

\$812,953.63 is currently available pending approval of the MOU.

**Boards and Commissions Review:**

None.

**Next Steps:**

- (1) Approve MOU
- (2) Obtain available funds when eligible projects commence.

**PREPARED BY:** Larry Marcus  
Larry Marcus, Chief of Transportation

9/21/2005

Date

**APPROVE:** Craig L. Simoneau  
Craig L. Simoneau, P.E.

9/21/05

Date

**APPROVE:** Scott Ullery  
Scott Ullery, City Manager

9/21/05  
Date

**LIST OF ATTACHMENTS:**

Attachment 1: Draft MOU

**MEMORANDUM of UNDERSTANDING**  
***Development Impact Taxes***

THIS MEMORANDUM OF UNDERSTANDING (the "MOU"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005 and is effective from and after the date of the last signature on the signature page, by and among the Mayor and Council of Rockville ("City"), an incorporated municipality in Montgomery County, in the State of Maryland, and Montgomery County, Maryland, a body corporate and politic ("County").

W I T N E S S E T H:

WHEREAS, On March 12, 2002, and effective July 1, 2002, the Montgomery County Council enacted Amendments to the Development Impact Tax, Article VII, Chapter 52, of the Montgomery County Code ("Impact Tax Law"), establishing a fourth impact tax district encompassing the Cities of Gaithersburg and Rockville, as well as the entire County.

WHEREAS, the newly-adopted amendments provide for separate accounting of development impact taxes collected from developments located in the cities of Gaithersburg and Rockville, as well as provisions for, in certain instances, refunds and credits.

WHEREAS, tax revenues collected from, and separately accounted for, the respective municipalities must be used to fund transportation improvements listed in an MOU between the County and the City, and approved by the Montgomery County Council.

WHEREAS, it is the intent of the County to further the public purpose of ensuring that an adequate transportation system is available in support of new development.

WHEREAS, the City recognizes the need to fund transportation improvements within City limits to support growth and development

WHEREAS, as provided for in the Impact Tax Law, the City may enter into an MOU with the County, which will include a list of transportation improvements for priority funding with Impact Tax revenues collected from developments within the City limits.

WHEREAS, the City and the County agree that it is in the best interest of the City to enter into and agree to the terms and conditions of this MOU.

WHEREAS, the City has authorized the City Manager to enter into this MOU on behalf of the City.

NOW, THEREFORE, in consideration of the above and the mutual promises hereinafter set forth, the parties hereto agree as follows:

1) In accordance with the provisions of Section 52-49(e) of the Montgomery County Code, the parties agree that the development impact taxes collected from developments located in the City must only be used to fund the transportation improvements that meet the following criteria:

- a) Improvements should be consistent with the approved and adopted City Master Plan or Neighborhood Plan; and
- b) Contained in an adopted City Capital Improvements Program; or
- c) Approved as a condition of a City development approval when the improvement is for an offsite improvement that meets the criteria contained in Section 52-58(d) or is an on-site arterial highway.

Below is the list of eligible transportation projects. FY 2006 Capital Improvements Program projects include the CIP project number, and the remaining improvements are either listed in the Adopted 2002 Comprehensive Master Plan or are under consideration for small scale capacity improvements. Impact Tax funds can be used only on the portions of the road projects listed below that creates new capacity in accordance with Section 52-58(d). Impact Tax funds can not be used for any improvement to or other action limited to a State road. Where the City or County has required a developer to fund all or part of an improvement, use of County impact tax funds must not replace the obligation of the developer to provide such an improvement. However, the developer may be eligible for a credit. Subject to approval by MC DPWT, the City may update this list on a semi-annual basis by providing MCDPWT with a revised list without amending this MOU. Any revised list shall be approved by the County Council.

- a) Bus Stop Shelters (CIP Project 420-850-2A80) new bus shelters (not replacement shelters)
- b) Dawson Avenue Extended (CIP Project 420-850-5A11)
- c) Town Square Public Improvements (CIP Project 420-600-0A80) that create new capacity including Maryland Avenue Extended – Phase I, Middle Lane to Beall Avenue
- d) Maryland Avenue Extended – Phase II, north of Beall Avenue (CIP Project 420-850-5C11)
- e) Pedestrian Safety/Traffic Improvements (CIP Project 420-850-4B71) that provide sidewalk connections to major activity centers or along arterial or major highways
- f) Town Center Capacity (CIP Project 420-850-6A81 )
- g) Town Center Shuttle Bus (CIP Project 420-850-6B81)
- h) West End Sidewalks (CIP Project 420-850-6B21 ) that provide sidewalk connections to major activity centers or along arterial or major highways
- i) Chapman Avenue, North of Halpine Road
- j) MD 355/Gude Drive (funds can not be applied to State road portion of improvement)

- k) MD 355/Wootton Parkway (funds can not be applied to State road portion of improvement)
  - l) MD 355/Park Road/Middle Lane (funds can not be applied to State road portion of improvement)
  - m) I-270/Gude Interchange (funds can not be applied to State road portion of improvement)
  - n) MD 355/King Farm Boulevard (funds can not be applied to State road portion of improvement)
  - o) MD 355/Redland Road (funds can not be applied to State road portion of improvement)
  - p) Shady Grove Road/Research Boulevard
- 2) Impact taxes collected within the City shall be appropriated or otherwise formally designated for the above-listed projects as impact tax revenues become available, in accordance with the Impact Tax Law, and in all instances, by the end of the sixth fiscal year after the tax is collected.
- 3) The City will notify the County when a commencement of an eligible transportation project is authorized by the City. The County shall provide available funds from the City impact tax account within 30 days. If the available funds in the City impact tax account are insufficient to totally fund the project and the City pays the balance of the project cost, then the County will forward the difference on a quarterly basis to the City upon receipt of eligible payments to the City impact tax account up to the full amount of the project cost.
- 4) The Chief Administrative Officer of Montgomery County and the City Manager of Rockville are authorized to execute such further documents and agreements that they determine to be necessary to implement this MOU and the Impact Tax Law.
- 5) **Dispute/Resolution:** In the event a dispute arises as to the interpretation or implementation of the Impact Tax law which cannot be resolved, the parties agree that the matter will be referred to the City Manager and the CAO of Montgomery County for consideration, review and resolution. If the City Manager and the CAO are unable to resolve the dispute they may agree to submit the dispute to mediation or binding arbitration or file an appropriate action in the Circuit Court of Montgomery County for resolution of the dispute.
- 6) This MOU shall be considered for amendments as proposed by either party, from time to time.

IN WITNESS WHEREOF, the CITY and the COUNTY have executed and sealed this MOU as of the date first written above.

WITNESS:

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\_\_\_\_\_

THE MAYOR AND COUNCIL OF  
ROCKVILLE,  
a municipal corporation

By: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

COUNTY OF MONTGOMERY, MARYLAND

By: \_\_\_\_\_

Date: \_\_\_\_\_